

ZONING BOARD OF APPEALS
MEETING MINUTES
JULY 13, 2010
4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:00 p.m.

ATTENDANCE:

Members Present: Deland Davis Carlyle Sims
Greg Dunn Becky Squires
Mike Fatt John Stetler

Members Absent: James Moreno

Staff Present: Jill Steele, Deputy City Attorney
Christine Hilton, Planning Supervisor
Glenn Perian, Senior Planner
Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

OLD BUSINESS: None

Mr. John Stetler, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. John Stetler stated if denied they may appeal to the Circuit Court.

NEW BUSINESS:

Appeal #Z-08-10: (7 Grand Blvd.)

Mr. John Stetler stated for the record this was a petition of American Tower, Ms. Bonnie Belair, 10 Presidential Way, Woburn, MA 01801 on behalf of property owner Mr. Arthur W. Crooks II; requesting a variance from Chapter 1297.08(2)(B) to allow a 10 ft. height extension to an existing Telecommunications tower located in an "R-2 Two Family Residential District". For property legally described as: RURAL PARK ADD THE W 240 FT OF THE S 50 FT OF LOT 31, ALSO LOT 32 & N 2 FT OF LOT 33 EXC S 51.2 FT OF W 131 FT OF LOT 32 & EXC W 131 FT OF N 2 FT OF LOT 33 (Commonly known as 7 Grand Blvd.) Parcel #7610-15-176-0.

Mr. Glenn Perian read the staff report and findings regarding the variance request: Appeal #Z-08-10 is a petition from American Tower seeking a variance to allow for an additional change in height of ten feet for an existing tower to allow for an additional wireless carrier on the tower located at 7 Grand Boulevard. In 2007, American Tower applied for and was granted a variance to relocate a tower on the property that predated the current ordinance. Along with the relocation and rebuild, the tower was increased from 120 to 140 feet. The request now is to increase the tower another 10' to allow for

additional wireless carriers. The ordinance states that a height change may only occur one time per tower.

Staff is recommending approval of appeal #Z-08-10 based on the following findings and those listed in the staff report:

- 1) Staff believes that there is an unusual practical difficulty associated with this lot and property due to the potential visual impact on the neighborhood in this case.
- 2) Staff does not believe the practical difficulty is self created in this case. The petitioner is trying to co-locate additional equipment on an existing tower instead of possibly constructing a new tower in the neighborhood.
- 3) Staff finds that the practical difficulties are exceptional and peculiar to the subject property in that there is already a tower located on the property and a ten foot extension will have a minimal visual impact on the neighborhood.
- 4) Staff believes the alleged practical difficulties result from conditions that do not generally exist throughout the City.
- 5) Staff believes that allowing the variance will result in substantial justice being done considering the public benefits intended to be secured by the Zoning code.

Based on these findings and those articulated in the staff report, we are recommending approval of this appeal with the stipulation that the Appellant give an explanation satisfactory to the Board that the tower cannot support the additional carrier without the requested ten foot variance.

Ms. Jill Steele noted to the Zoning Board that this appeal is different than others that have been before them, in that they should note Federal Law requirements (handed out "Telecommunications Act of 1996" document); stated if they disagree with staff report they would need a very good reason to deny and would need to be in writing and supported by substantial evidence for the record.

Ms. Bonnie Belair, Attorney with American Tower, 10 Presidential Way, Woburn, MA 01801, is present to speak on behalf of property owner Mr. Arthur W. Crooks II. Ms. Belair stated the existing tower has been there for 12 years and had been rebuilt in 2007 to allow it to hold additional carriers; noted that the additional 10 ft. is minimal and not a substantial difference in the visual impact. They consider there is a practical difficulty because of the nature of the business of telecommunications, as any other business does not have to operate at the heights of 150 ft. or above trees, buildings and other things in order to transmit and receive their signals. Ms. Belair stated that a new customer; Clear-wire want to co-locate on this tower and need the 10 ft. extension in order to do so. Noted it would provide better emergency communication such as 911 calls etc., which would be a benefit to the community.

Mr. Juan Macisus; Sr. Radio Frequency Engineer for American Tower Co., 400 Regency Forest Drive, Ste. 300, Encary, NC 27542, was present with Ms. Bonnie Belair. The following questions were asked by Ms. Belair:

Question: What is the meaning of RF?

Answer: RF stands for radio frequency and for the company he gives advice for the co-location in supporting of customers in the co-location of the towers based on interference/interpolation products, compliance with human exposure as well as some cases the design. He helps sometimes with the design to know what is better for them in terms of heights and help also with their plans.

Question: Have you had an occasion to testify as an expert in RF design for other proceedings?

Answer: Yes, several times.

Question: Have you considered Clearwire's current level of coverage in the City of Battle Creek?

Answer: Yes, he received some communication from Clearwire's Engineers that were two forecast maps (handed-out) showing the current coverage showing a large gap of no coverage for customers; and the other map shows coverage after the requested 10 ft. extension for the 150 ft. total height. Stated Clearwire is a wireless internet service provider and basically give the customer the allowance to have high-speed access to data and connection to the internet. Noted when you do not have enough coverage in those types of networks; you simply cannot access the network and would not be able to have intranet access. Stated that in order to have that service they need to have microwave dishes in the tower; those microwaves are considered back hole and include a radio which is a specific piece of equipment that is behind the antenna that helps to provide the highest peak of data transmission from point A to point B. Noted that the very minimum height they need for it to work is 149 ft., and cannot accommodate their equipment on the existing tower and the whole would still be there for no service.

Question: Is this minimum height necessary to solve the coverage gap for Clearwire.

Answer: Yes, absolutely. In terms of the distribution of the forecast these maps are created on a span of 30 meters which is roughly 10 ft., which is needed for coverage.

Question: Will the facility create any interference with radio or television reception?

Answer: No, they have a tool for interference and have done the calculation to prove there is no interference predicted at this point.

Question: Will the facility operate in accordance with all applicable limits (or below) the levels for human exposure to the radio signals as established by the FCC.

Answer: Yes, the FCC regulation based on the OET65 is the governing solution that the government put out for everyone to follow; this regulation is based on calculations presented along time ago in the 1990's in order to accommodate the fact that PC's were coming out and there was a high interest in the human exposure not only for occupational (public users and those working with antennas). The minimum they consider dangerous is probably 40 feet and the increase to 150 ft. is way above whatever is needed.

Mr. Carlyle Sims stated that Battle Creek has an Air Academy and asked if the FAA had approved the additional 10 ft. height, and are they required to put a light on this tower. Ms. Bonnie Belair stated yes, they do have FAA approval up to 160 ft. and no requirement from FAA for any kind of lighting or marking; stated that generally the FAA does not require that until the tower is at least 200 ft. tall unless it is within a flight path for planes, which this is not.

Mr. Greg Dunn asked if only allowing a 10 ft. extension limit for the height of the tower was common for other cities ordinances. Ms. Belair stated no it is not common, they do not limit it to one extension per tower; they limit the height everywhere and do need to apply for a variance just because usually the height requirement are 35 ft. Stated that 150 ft. tower is not that high, they have some 200 ft. high and some above.

Mr. Juan Macisus stated it has changed dramatically through the years and have seen more and more allowing the extensions based on the 1996 Act Ms. Steele mentioned; everything is based not only coverage, but the government is very interested in enhancing the 911 equipment, for example along the Gulf Coast they are helping the Coast Guard with the BP oil spill. Ms. Belair stated as persons need change, everyone uses cell phones and added that there will be four carriers on this tower and will not need to build another tower.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. GREG DUNN MADE A MOTION TO APPROVE #Z-08-10 FOR A VARIANCE FOR PROPERTY LOCATED AT 7 GRAND BLVD. AS SUBMITTED WITH CONDITIONS AND FINDINGS NOTED IN THE STAFF REPORT; SUPPORTED BY MR. DELAND DAVIS.

Discussion:

Mr. Greg Dunn stated he is satisfied with report from the appellant and the engineer's explanation regarding the need for additional coverage for that area and stated he will be voting in favor.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; ALL IN FAVOR; NONE OPPOSED: MOTION APPROVED.

Appeal #Z-09-10: (155 Garfield Ave.)

Mr. John Stetler stated for the record this was a petition of Slocum Associates, Mr. Jon Rambow, 521 S. Riverview Dr., Kalamazoo, MI 49004, on behalf of Starr Commonwealth; requesting a variance from Chapter 1284.01(b)(4) & 1284.01(c) to allow a decrease in number of off-street parking spaces required; in order to build an addition to existing facility for property located in an "O-1 Office District. Property legally described as: SKINNER & STONE ADD LOTS 3, 4, & 5 ALL OF LOT 39 PART OF VAC ALLEYS ADJ & E ½ OF VAC TOMKINS ST ADJ ON W (Commonly known as 155 Garfield Ave.) Parcel #7960-00-004-0.

Mr. Glenn Perian read staff report and findings regarding the variance request: Appeal #Z-09-10 is a petition from Starr Commonwealth seeking a variance to waive the number of parking spaces provided at 155 Garfield Street in conjunction with a proposed building expansion. The request is to provide 27 parking spaces when 57 spaces are required by code.

The subject lot is somewhat irregularly square shaped, located in the O-1 Office District. The subject lot is approximately 189 feet wide and 193 ft. deep. The existing building has a walkout basement and it is fair to say that the grade of the lot slopes to the rear of the property limiting the full development potential of the lot in regards to parking.

Staff is recommending approval of appeal #Z-09-10 with 3 conditions based on the following findings and those listed in the staff report:

- 6) Staff believes that there is an unusual and practical difficulty associated with this lot in that the grade of the property limits development in regards to parking.
- 7) Staff does not believe the practical difficulty is self created in this case.
- 8) Staff finds that the practical difficulties are exceptional and peculiar to the subject property.
- 9) Staff believes the alleged practical difficulties result from conditions that do not generally exist throughout the City.
- 10) Staff does not believe practical difficulty is deemed a financial hardship in this case and is substantially more than a mere inconvenience.

Mr. Perian stated based on the noted findings and those articulated in the staff report, we are recommending approval of this appeal with the following conditions: #1-Overflow parking agreements outlining the terms between Battle Creek Public Schools and Starr Commonwealth are in place an on

file with the City for 30 spaces . #2-That a directional sign is placed in the Starr Commonwealth lot directing anyone to the of-site overflow parking location, and (not in staff report, but suggested by City Attorney's Ofc.) #3 The property must come into compliance with applicable parking regulations at such time where there is a significant change in use and/or staffing situations or levels.

Mr. Jon Rambo, Architect for Slocum Associates, 521 S. Riverview Dr., Kalamazoo, MI 49004, and Mr. Chris Smith, Chief Financial Officer, Starr Commonwealth, lives at 11345 F. Drive South, Battle Creek, MI, was present to speak. Provided an overview of what Starr Commonwealth does in counseling work with children and foster-care homes. Noted they need the addition as they have been growing and will be moving classrooms and office space to this location. Said most of their staff works out in the community, so their parking needs are really quite limited at the facility as they occasionally have parents coming in and other visitors not in large numbers at the same time.

Mr. John Stetler asked if they were referring to the parking that is diagonal along the road. Mr. Rambo provided a hand-out photograph that showed 60 parking spaces along the road; said he is working with Battle Creek Public Schools to workout over flow parking and will be receiving a letter from them saying they have permission.

Mr. Stetler asked if the schools have the authority to approve parking along the street or is it public parking. Mr. Rambo said they are trying to find out that information now.

Mr. Tom Binkler, 15144 M-66 South, with Switzer Construction Co., came forward to speak; said their programming is such that they are out in the community, they very seldom use the 10 spaces they have and are proposing going to 27 spaces. Stated very seldom is the 10 spaces utilized at this point and time and that Battle Creek Public Schools is not opposed to them using the street parking, but have not received it in writing at this time and technically think it is city property.

Mr. John Stetler asked Mr. Perian if the street parking would change the required minimum spaces for parking. Mr. Perian stated it does not change the required number of off street parking; thinks that if the street parking is determined to be city parking, the condition letter from BCPS could be eliminated in the variance approval and if approved it may be with the stipulation that there is public parking in the near vicinity.

Mr. Deland Davis stated that when the school courts or school events are being held the street parking would be used for the parents, or spectators etc.

Ms. Sabrina Corvin, Exec. Director of Battle Creek Starr Commonwealth Office; noted they only have eight staff that are community based and are in the community or home and are supplied with computers etc. and their work is out in the community. Stated they have staff days and maybe are up to fifteen in the building and quarterly hold staff meetings at 10:00 A.M. with maybe 49 persons there during the day with the school events in the early evening, so it would not cause a problem.

Mr. Greg Dunn asked for the record if they have a problem with BCPS using this parking or with any of the other conditions outlined in the staff report; also asked if condition #3 is acceptable to them. Mr. Rambo stated yes they are in agreement, if it changed use it would be the new owner's problem.

Mr. Dunn wanted to note for the record that he is aware of Starr Commonwealth's work and that he appreciates what they do for the community and there is a tremendous need for the services they provide.

Mr. Mike Fatt asked if the parking is outlined based on the use of the building. Mr. Perian stated yes. Mr. Fatt asked if the number of staff was increasing. Ms. Sabrina Corvin stated yes and no, they will be moving the advocates; which is the schooling there and the staff is already counted in the 49 and the building occupants are not driving as they are students and would be dropped off.

Mr. Deland Davis asked if in the addition is completed and in the future if there was a change in business that would require 57 parking spaces; will there be enough land to add the other 30 parking spaces.

Mr. Rambo stated the property has a steep incline to prevent erosion and are land locked; said they would be using all the land they have.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. CARLYLE SIMS MADE A MOTION TO APPROVE #Z-09-10 FOR A VARIANCE TO ALLOW A DECREASE IN NUMBER OF OFF-STREET PARKING SPACES FOR PROPERTY LOCATED AT 155 GARFIELD AVENUE AS SUBMITTED WITH CONDITIONS AND FINDINGS NOTED IN THE STAFF REPORT; SUPPORTED BY MS. BECKY SQUIRES.

Discussion:

Mr. Deland Davis stated he went by twice and agree that the 10 parking spaces are not being used during the daytime and looked like the street parking was used, but not sure who was using them.

Mr. Greg Dunn asked staff regarding the last recommendation, seems that they would be putting them into a box when we say that any future uses in the property would revert to the parking. Does staff still support that 3rd recommendation noted in the report.

Ms. Jill Steele, Deputy City Attorney, explained the code provisions; stated staff recommended because the business use does not need the parking. Stated in this case, if a condition was established of having a unique staffing situation as much of the staff is out into the community and if that condition were noted that there were to have a change in staffing, it would be a reason for granting the variance and she thinks it is an important condition to have added to the motion for approval.

Mr. Greg Dunn stated he understands the stipulation and that in the past the ZBA had approved less parking because of the nature or type of business.

Mr. John Stetler stated he assumes if there were a new buyer for the property, they could come before the ZBA and ask for an appeal based upon their usage of the building.

Ms. Steele stated if they had a similar situation where their staff is not using the parking, then they would not have to come to the ZBA for approval.

Ms. Christine Hilton stated that the zoning ordinance notes that when a property changes their use; the parking needs to be addressed and is determined by the ordinance and that they look at each situation.

Ms. Steele stated that if Starr Commonwealth had a change in staffing or the way they do business at that location, they would need to come up with a new situation to address the parking.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; ALL IN FAVOR; NONE OPPOSED: MOTION APPROVED.

APPROVAL OF MINUTES:

A copy of the June 8, 2010 minutes was handed out prior to the meeting with the addition of members absent being noted; the copy provided in their packet mailed did not note members not in attendance.

MOTION: WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE JUNE 8, 2010 ZONING BOARD OF APPEALS MINUTES WITH ADDITION OF ABSENT MEMBERS NOTED; SUPPORTED BY MR. DELAND DAVIS. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. Greg Dunn referenced comments by Ms. Bonnie Belair, Attorney with American Tower regarding one change per tower, that maybe the Planning Commission look at the requirement on the one change per tower, seems the logic they are using on this is going to almost always going to prevail to extend the height vs. building a new tower.

Ms. Christine Hilton stated that a cap on the one-time height change is for only administrative approvals; that all other approvals can go through the Planning and City Commissions for a Special Use Permit. Noted that by administrative and staff approval they can just do the one height change or go through the Special Use Permit process and is not inconsistent with other ordinances she is familiar with, because of that type situation.

Mr. Dunn asked why this one today would not require a Special Use Permit. Ms. Hilton stated this is a Non-conforming tower at that location and certain towers require SUP and certain require administrative approval; ultimately this one required administrative approval was then capped by the one-time height change.

Mr. Carlyle Sims stated the Planning Commission and city staff had done a lot of work in the past regarding cell towers; noted he was on the committee and that many issues were addressed and a lot of research had been done. Said with the Aviation School at the airport they could not afford to put towers in areas that could create a problem for future airport growth.

Mr. Deland Davis asked Ms. Christine Hilton if when they approve a larger out-building that it went with the property and would not have to tear it down. Asked regarding the petition today for parking

that if it had another use at that location they might have to come back before the ZBA; he thought if they approved 27 parking spaces that it went with the property forever. Ms. Hilton explained that with the condition placed on the approval for this request, it does not necessarily go with it forever. Said any building in general that is an existing building, regardless if it has a variance or not that once the use of it is changed they are to look at the parking requirements to make sure that the type of business can accommodate the required parking determined with its use.

ADJOURNMENT: Mr. John Stetler moved for the meeting to be adjourned; all in favor, meeting was adjourned at 5:00 p.m.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department